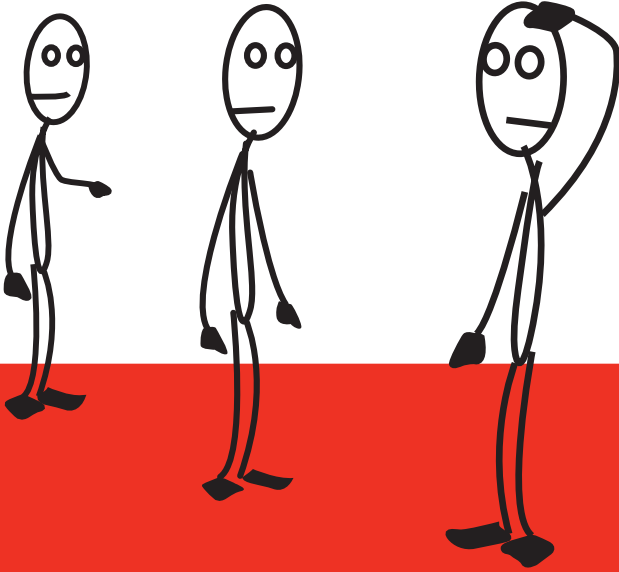


ACCIDENT or Negligence?

A guide on how to avoid preventable injury
from the Association of Personal Injury Lawyers





INTRODUCTION

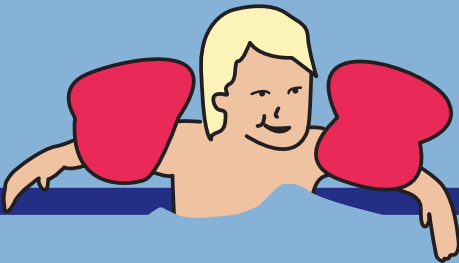
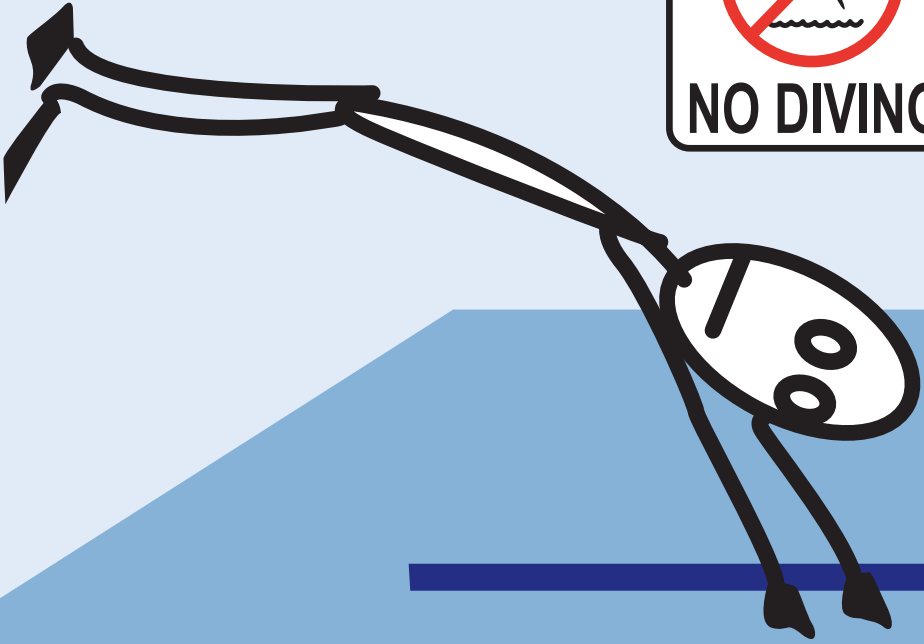


This short guide aims to help people understand the difference between an accident and negligence, and to offer general advice on how to identify the former and avoid the latter.

This is not an exhaustive interpretation of the current law, but an attempt to correct some common misconceptions about how the law applies when a person has been injured by someone else.

In today's society, many people think that it is possible to sue for compensation whenever an injury occurs, that windfall damages are dished out automatically by the courts, and reputations ruined for no good reason. This is not the case. Litigation can be a difficult and stressful process for all concerned and injured people often express the view that all they want to do is wind the clock back to the time before the injury and to put their lives back on track.

The Association of Personal Injury Lawyers believes that the best way to avoid litigation is to avoid the negligence which can lead to lives being ruined.



WHAT IS AN ACCIDENT?

An accident is simply an incident which no-one could have reasonably foreseen and for which no-one should be held responsible. No-one will win a case against someone who they may think is responsible for an injury, if that injury has been caused by an accident.

WHAT IS NEGLIGENCE?

The concept of negligence is not new. It goes back to the 1930s, when it was first defined in the courts in the case of Donoghue versus Stevenson in the House of Lords. This case has been used to identify negligence ever since.

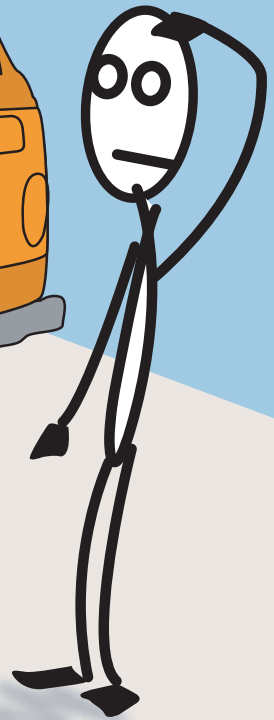
During this case, one of the law lords, Lord Atkin, explained that the law governing complaints and their remedies is limited. He explained that you “must take care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour”.

This then leads to the obvious question: who is my neighbour? Lord Atkin’s view was that your neighbours are people so closely and directly affected by what you do or don’t do, that you should bear the impact of your actions on them in mind.

It means everyone you are likely to come into contact with, as a car driver, as an employer, as an occupier of land and buildings which people visit – pretty much everyone, in fact.

In short, what defines negligence is whether you do something which you can reasonably foresee will injure someone else who is likely to be affected by your actions, or your lack of action.







RISK ASSESSMENT

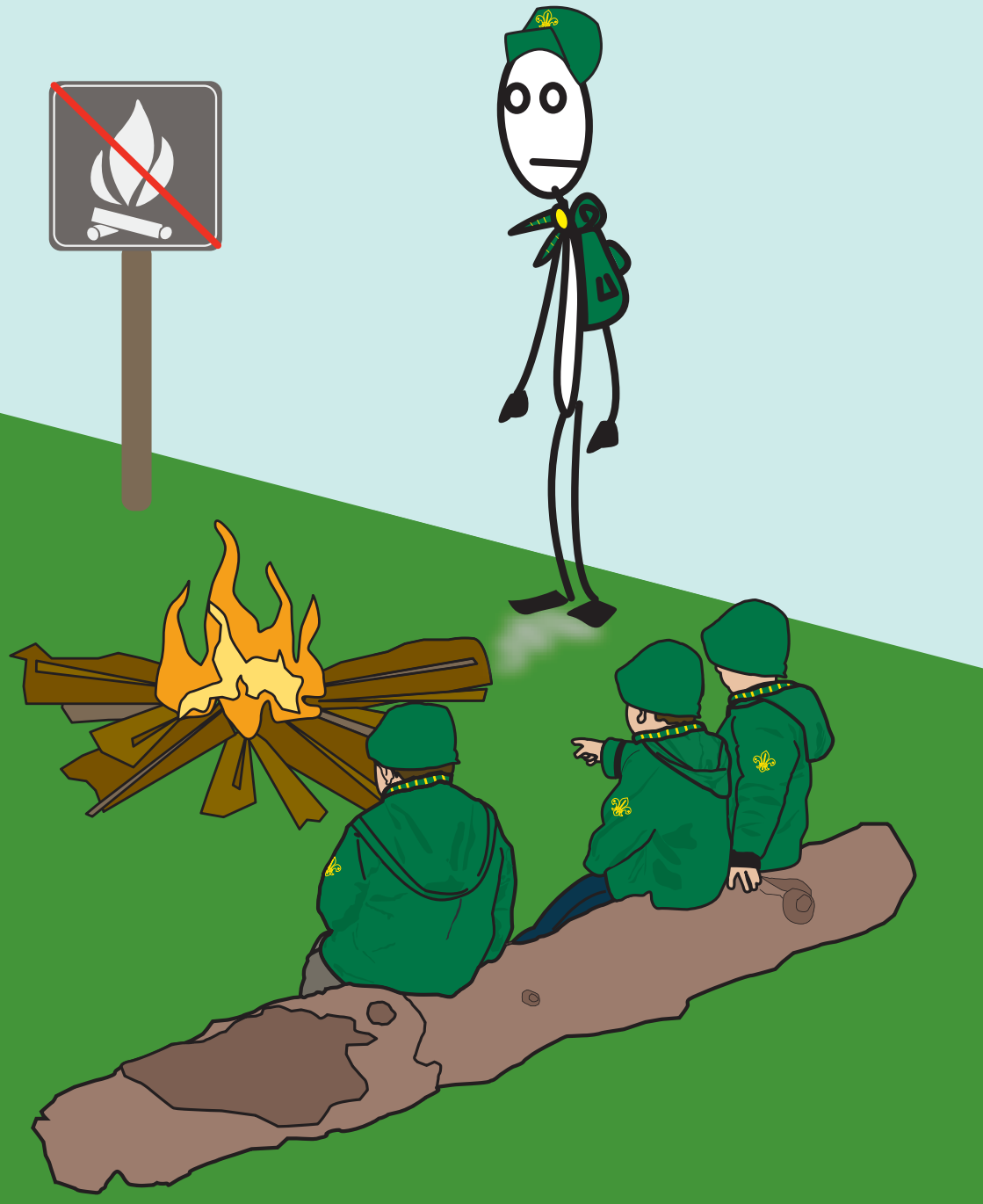
Everyone makes risk assessments every day, such as when crossing a road. In circumstances in which your actions could involve risk to your 'neighbour', however, the law requires a more careful risk assessment to be made. This does not always have to involve written records, but whatever risk assessment you undertake, your assessment, and what you then do afterwards, must be considered 'reasonable'.

The following are examples of what might be taken into consideration in three different hypothetical situations.

Example 1

Often a risk assessment is simply a matter of common sense. If, for example, you are driving a small group of people in a minibus, you should consider what could go wrong. This may include running out of petrol, mechanical breakdown, or involvement in a traffic crash. You should then consider who might be affected if something goes wrong, and how badly. You then need to consider the likelihood of these risks actually happening.

The next step is to examine what precautions are already in place and what more you may reasonably have to do to control the risks. This may include checking you have enough petrol for the journey, that the minibus has been regularly and properly serviced and that all the passengers are wearing seatbelts. This process would be automatic for most people. There is no need to fill in forms or produce risk assessment documents in such circumstances.





Example 2

Scout leaders, leading groups of young people on a hill walk, would need to conduct a more systematic, written risk assessment, both to ensure all the risks have been considered and that a rescue can take place if necessary. Not only would they be expected to consider issues such as weather conditions and the suitability of the terrain for the age, experience and capabilities of the group, but they should prepare a practical assessment of the details of the excursion, such as the type of clothing the scouts need to wear; details of the route; the type of communications required; places on the hill where the excursion could be aborted for safety reasons; expected time of return, and so on.

Someone engaging in such an expedition should also hold the relevant qualifications, eg the appropriate mountain leader certificate. A leader of an excursion like this would be negligent if he or she attempted to lead a party without undertaking proper training, which would include essential safety precautions.

Again, the risk assessment involved in this example represents, to an extent, the application of practical common sense, although no-one can know all about safety in this scenario without training and guidance. This enables the scouts to undertake the activity as safely as possible under the circumstances, and is a measure which any reasonable parent would expect when entrusting a child to the care of another person.

Example 3

Someone who is responsible for the safety of hundreds of people in a nuclear facility would need to conduct a very different type of risk assessment, although the principles remain exactly the same. There will be a greater number of different risks to consider, some of them highly complex to understand and manage. This means that more substantial written risk assessments and procedures are required.

In any circumstances involving risk, it is important to remember that the key test is that you assess and act in a reasonable manner. The greater the risk of injury, especially serious injury, the more the law expects you to plan and guard against danger.



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HOW IS REASONABLE DEFINED?

'Reasonable' is whatever a person put in your position would consider to be reasonable in the circumstances. If, in the context of the scouting expedition, there is an incident and someone is injured, you are unlikely to be considered negligent if a right-thinking person considers that your risk assessment and precautionary measures were reasonable, and had been adhered to.

There are refinements: for example, the 'reasonable' standard is higher if you are dealing with children, where the test of your actions is to compare them with what a sensible parent would consider 'reasonable'. Similarly, if you have a special skill, such as mountain climbing, the test would be to compare your actions with another climbing instructor with the same qualifications and experience.



CONCLUSION

It is everyone's responsibility, both legally and morally, not to injure people needlessly. Every day, we undertake risk assessments almost subconsciously and most of these assessments are simply a matter of common sense.

Embracing the need for more systematic risk assessments in certain situations does not have to be particularly difficult or complicated.

Risk assessments are not designed to prevent you from undertaking activities – they are designed to enable and help you to undertake them without causing needless injuries to yourself and others.

SOURCES OF GUIDANCE

This leaflet is designed as a tool to help you understand the difference between an accident and negligence. The law in this area can, however, be very complex, and you are always advised to seek legal advice from a qualified lawyer who knows how the law applies to your particular circumstances. For more information, see the website of the Association of Personal Injury Lawyers at www.apil.org.uk

There is also a wealth of information and guidance available about how to conduct risk assessments in specific fields and industries. The Health and Safety Executive (HSE) in particular, has a wealth of accessible information in the form of on-line information, helplines, books and films. For more information, see the HSE website at www.hse.gov.uk



This leaflet has been designed by the Association of Personal Injury Lawyers (APIL) which was established in 1990 to protect the rights of people injured through negligence. Members abide by a code of conduct and a consumer charter and have access to a specialised training and accreditation scheme which helps consumers to find lawyers with appropriate experience and expertise.

For more information contact APIL at 0115 958 0585 or visit the website.